

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re the Application

**URGENT**

Inventors: Naoyasu MIYAGAWA, et al.

Appln. No.: 09/460,222

Filed: December 13, 1999

**Attention  
Special Application -  
Subject to Expedited  
Processing**For: OPTICAL RECORDING/REPRODUCING APPARATUS FOR OPTICAL  
DISKS WITH VARIOUS DISK SUBSTRATE THICKNESS

PETITION AND REQUEST FOR EXTENSION OF TIME  
TO FILE REQUEST FOR ORAL HEARING  
UNDER 37 CFR 1.136(b) AND MPEP 1002.02(c)(8)

A Request for Oral Hearing is due in this reissue  
application on July 19, 2003.

Applicants respectfully petition for and request a one-month  
extension of time to file a Request for Oral Hearing in this  
application based on good cause pursuant to 37 CFR 1.136(b).

The reasons for this Request are:

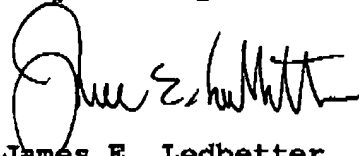
- (1) this application is subject to a recapture rejection,
- (2) a recent precedential Board decision in *Ex parte Eggert et al.*, Appeal No. 2001-0790, Application No. 09/110,145, decided May 29, 2003 and made available to the public on June 30, 2003, is pertinent to the recapture issues in this application, and
- (3) additional time is needed in order to evaluate the decision in *Ex parte Eggert et al.* and develop arguments in

Appellants' Reply Brief in this application, taking into account this recent decision.

Accordingly, a one-month extension of time to August 19, 2003 for filing a Request for Oral Hearing is respectfully requested.

If any fee is due, the fee may be charged to deposit account no. 19-4375.

Respectfully submitted,



Date: July 18, 2003

James E. Ledbetter  
Registration No. 28,732

JEL/att

ATTORNEY DOCKET NO. JEL 30233

STEVENS, DAVIS, MILLER & MOSHER, L.L.P..  
1615 L Street, N.W., Suite 850  
P.O. Box 34387  
Washington, D.C. 20043-4387  
Telephone: (202) 408-5100  
Facsimile: (202) 408-5200

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JUL 18 2003

Special Program Unit  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE Group 2700

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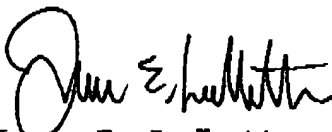
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Respectfully submitted,



Date: July 18, 2003

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1615 L Street, N.W., Suite 850  
P.O. Box 34387  
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## MASTERS LEVEL CRITERIA (FACTOR III, LEVEL A)

An Examiner is recognized as operating at Masters Level when (1) the technological subject matter encompassed by his docket embraces concepts which, on the basis of prerequisites, cannot normally be acquired in an undergraduate curriculum; (2) these concepts occur in significant number and diversity; (3) such concepts must be thoroughly mastered by the Examiner before he can effectively and dependably examine applications in the art; (4) the Examiner has demonstrated, by his work and the testimony of his supervisors, that he actually does employ a knowledge of such in his examination of applications; and (5) such concepts arise in a significant number of cases on which the Examiner works at least 25% of the time.

### I. Nature of the Concepts

#### A. Level

1. The best evidence that a concept is of the masters level is that it is taught as a portion of a graduate level course offered by an accredited institution of higher learning.
2. Acceptable evidence that a concept is of the masters level is that it forms a portion of the subject matter of course-work offered or recommended by industry or technical associations which specify as prerequisite other course-work which could be obtained only by completion of four years of undergraduate courses in science or engineering or for which such prerequisites are obviously needed.
3. "Some" evidence that a concept is of the masters level is its inclusion in a textbook which styles itself as a "graduate" text.
4. A "survey" or "general working" knowledge of a concept is not what is envisioned at the masters level. The knowledge requirement is for a "thorough mastery" of the concept.

#### B. Number and Diversity

1. The amount of course-work required for masters level credit should, as a minimum, be one-half the number of credit hours which are normally required for a masters degree in a technical field. (Degree requirements are normally 30 semester hours; hence, a masters level art might be expected to require 15 semester hours.)
2. The concepts for which credit is given as being at masters level are evaluated apart from the courses in which they are normally taught. That is, credit is not given for the entire course but for only that portion of a course which is directed toward the concept being evaluated.

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3. Extreme diversity of concepts (i.e., isolated bits of this and that) throws extreme suspicion on the need for a true mastery of the concepts. In most such cases, the concepts cited arise only occasionally in the art and expert assistance from those familiar with the subject may usually be sought. Moderate diversity is, in fact, desirable if it is accompanied by specialization in depth (i.e., several courses) in one or two subject matter areas.

## II. Application of Concepts

### A. Examiner's Knowledges

1. The Examiner must have demonstrated that he does, in fact, possess that mastery of each of the concepts credited which is required. The source of this knowledge is immaterial; it may have been gained from formal course-work, from independent reading, through on-the-job experience, or by any other means.

### B. Employment in Patent Examination

Actual use by the Examiner of the concepts credited must be shown. Best evidence is the Examiner's own Office Action which clearly makes use of such knowledge. Acceptable evidence is an application or reference drawn from the Examiner's art, from which it is apparent that one would have to possess a mastery of the concepts involved in order to do a creditable examining job.

2. There must be evidence that the Examiner, in handling cases involving masters level concepts, actually does a creditable examining job.

### C. Incidence

1. The full gamut of the concepts credited must occur with significant frequency in the cases examined. This requirement will be deemed to have been met if not less than one-fourth of the examining time of the Examiner whose art is being evaluated embraces such concepts. If the great bulk of these cases concentrate on only a few of the credited concepts, the "full gamut" is not met.

## III. Role of the Position Classifier

### A. Reliance on Others

1. The Position Classifier is entitled to rely, where necessary, on the judgments of the Examiner's supervisors and of other Patent and Trademark Office authorities in the subject matter field as to:

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- (a) actual knowledges possessed by the Examiner;
  - (b) extent to which the art requires mastery of the concepts involved;
  - (c) number of cases in which credited concepts arise or percentage of examining time spent on such cases;
  - (d) actual use by the Examiner of credited concepts in Office Actions, application of references etc;
  - (e) performance by the Examiner of a creditable examining job in cases involving such concepts.
2. The Position Classifier is never excused from applying his own judgment in situations where the facts clearly show the statements or conclusions of others to be erroneous.
- B. Classification Decision
1. The Position Classifier is required to determine for himself any fact which is verifiable by documents intelligible to a layman.
2. Specifically, the Position Classifier must make his own decision as to:
- (a) the educational level at which concepts are taught;
  - (b) the number of course-hours for which credit may be given;
  - (c) the effect of diversity of concepts and specialization-in-depth on actual knowledge requirements;
  - (d) the ultimate question -- whether the burden of additional knowledges placed upon the Examiner by the complexity of his art is such as to entitle him to the grade-determining credit provided in the Position Classification Standard for the Patent Examiner Series, GS-1224-0.

#### IV. Appeal

The decision of the Position Classifier may be appealed in the same manner as any other classification decision. This is true even though the additional point credits associated with the Masters level rating may not result in a grade change for the examiner.